IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
AND
THE HONOURABLE MRS.JUSTICE K.HEMA

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(Crl.).No. 163 of 2007(S)

PETITIONER:

SMT.MOLLY, AGED 45 YEARS, D/O.GEORGE,
THOPIL HOUSE, KAMPIVELIKKAKOM, KAKKANAD, NOW
RESIDING AT PLOT NO.67, JUDGES AVENUE, KALOOR,
KOCHI-17.

BY ADV. SRI.LELLULAL T.G.THUNDATHIL
SRI.K.A.SREEJITH

RESPONDENTS:
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1. SRI.JHONSON THOMAS, AGED 44 YEARS,
PADIJANRATHIL MUGALVILA VEEDU, ELAMPAL P.O.,
PUNALOOR, KOLLAM DISTRICT.

2. SMT.JOLLY, AGED 35, W/O.JOHNSON THOMAS,
PADIJANRATHIL MUGALVILA VEEDU, ELAMPAL P.O.
PUNALOOR, KOLLAM DISTRICT.

3. THE SUB INSPECTOR OF POLICE,
PUNALOOR.

R1 & R2 BY ADV. SRI.THOMAS ABRAHAM
SRI.K.B.ARUNKUMAR
SRI.DIPU.R

R3 BY GOVT.PLEADER SRI C.M.KAMMAPPU

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE LAWYER NOTICE DTD. 15/5/2007 ISSUED TO RESPONDENTS BY PETITIONER.

EXT.P2 TRUE COPY OF THE BIRTH CERTIFICATE DATD. 3/8/2002 ISSUED BY THE CORPORATION OF COCHIN.

P.R. RAMAN & K. HEMA, JJ.

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W.P.(CRL) NO. 163 OF 2007

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DATED THIS, THE 6TH DAY OF AUGUST, 2007.

J U D G M E N T

Raman, J.

Petitioner is the mother of a minor girl, Georgeena, who is nine years old. She is studying in IVth standard and she is now in the custody of the petitioner's younger sister, the second respondent herein. It is the case of the petitioner that her sister, the second respondent, had no child initially and so she gave her child to the second respondent on request and promise to return the child on demand. But subsequently, a child was born to the second respondent and when petitioner requested her to return the child, she refused to do so. It is alleged that the child is being harassed and tortured by respondents 1 and 2.

2. Pursuant to the notice, the second respondent appeared through counsel. We have interacted with the petitioner, her sister Smt. Jolly, the second respondent, the alleged detenue Georgeena and also with the eldest daughter of the petitioner, who is aged 21 years and is now working in the Asianet Cables.

3. The allegations raised in the writ petition are denied. According to the second respondent, the child was brought up by her ever since it was three years old and she has developed attachment towards the child . The child is being looking after well who is now studying in IVth standard. According to the second respondent the child is being brought up in the better atmosphere.

4. We have interacted with the parties. Based on such interaction, we find that even going by the averments, the custody of the petitioner's child with the second respondent cannot be said to be illegal. What was the understanding etc. are, however, not matters since the facts are in dispute. We also find that the child is cheerful, smart and happy with the second respondent. The second respondent, however, submitted that the child can be sent to the petitioner's residence during vacation. To this suggestion, the petitioner has agreed for the time being.

In the circumstances, recording the above submission, the writ petition is closed, leaving open the right of the parties to approach the Family Court in case there is any further grievance to be redressed and the Family court, in that event, will adjudicate the dispute untrammeled by any observations made in this judgment.

P.R. RAMAN,
(JUDGE)

K. HEMA,
knc/- (JUDGE)